

SENATE BILL NO. 357

INTRODUCED BY SQUIRES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SOCIAL WORKERS TO PASS CRIMINAL BACKGROUND CHECKS PRIOR TO THE ISSUANCE ~~OR RENEWAL~~ OF A SOCIAL WORK LICENSE; PROHIBITING THE ISSUANCE ~~OR RENEWAL~~ OF A LICENSE IF THE APPLICANT HAS BEEN CONVICTED OF OR HAS PLEADED GUILTY TO ENUMERATED CRIMES; ALLOWING THE BOARD TO WAIVE THE PROHIBITION BASED UPON CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 37-22-101; AND 37-22-301, ~~AND 37-22-304~~, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-22-101, MCA, is amended to read:

"37-22-101. Purpose. The legislature finds and declares that because the profession of social work profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ~~insuring~~ ensuring ethical, qualified, and professional practice of social work and by preventing convicted criminal offenders from perpetrating new crimes on vulnerable social work clients in the state of Montana. This chapter and the rules promulgated under 37-22-201 set standards of qualification, education, training, and experience and will establish professional ethics for those who seek to engage in the practice of social work as licensed social workers."

Section 2. Section 37-22-301, MCA, is amended to read:

"37-22-301. License requirements -- exemptions. (1) A license applicant shall satisfactorily complete an examination prepared and administered by the board and shall pass a background check as provided in subsection (5) in order to demonstrate the absence of a criminal conviction, the absence of a guilty plea, and the absence of a nolo contendere plea relating to the offenses listed in subsection (6).

(2) Before an applicant may take the examination, the applicant shall present three letters of reference from licensed social workers, licensed clinical social workers, psychiatrists, or psychologists who have knowledge of the applicant's professional performance and shall demonstrate to the board that the applicant:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social

1 work education or approved by the board;

2 (b) has completed at least 24 months of supervised post master's degree work experience in
3 psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in
4 direct client contact, within the past 5 years; and

5 (c) abides by the social work ethical standards adopted under 37-22-201.

6 ~~(3) An applicant who submits an application for licensure before October 1, 1994, may acquire the~~
7 ~~supervised experience required by subsection (2)(b) in less than 24 months.~~

8 ~~(4)(3)~~ An applicant who has failed the examination may reapply to take the examination.

9 ~~(5)(4)~~ An applicant is exempt from the examination requirement if the applicant satisfies the board that
10 the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that
11 imposes substantially the same requirements as this chapter and that the applicant has passed an examination
12 similar to that required by the board.

13 (5) (a) The board shall require a criminal background investigation of each applicant by means of a
14 fingerprint check by the Montana department of justice and the federal bureau of investigation.

15 (b) The applicant shall sign a release of information to the board and is responsible to the department
16 of justice for the payment of fees associated with the criminal background check.

17 (c) Upon completion of the criminal background check, the department of justice shall forward all
18 information obtained concerning the applicant that involves the commission of any offense listed in subsection
19 (6) to the board.

20 (d) At the conclusion of any background check required by this section, the department of justice shall
21 promptly destroy the fingerprint card of the applicant.

22 (6) An applicant is not eligible to receive, hold, or renew a license issued by the board if that applicant
23 has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in
24 Montana or of any similar offense by a court in another state or by a federal court:

25 (a) deliberate homicide, as provided in 45-5-102;

26 (b) mitigated deliberate homicide, as provided in 45-5-103;

27 (c) negligent homicide, as provided in 45-5-104;

28 (d) assault, as provided in 45-5-201;

29 (e) aggravated assault, as provided in 45-5-202;

30 (f) negligent vehicular assault, as provided in 45-5-205;

- 1 (g) partner or family member assault, as provided in 45-5-206;
2 (h) assault on a peace officer or judicial officer, as provided in 45-5-210;
3 (i) assault on a minor, as provided in 45-5-212;
4 (j) assault with a weapon, as provided in 45-5-213;
5 (k) kidnapping, as provided in 45-5-302;
6 (l) aggravated kidnapping, as provided in 45-5-303;
7 (m) robbery, as provided in 45-5-401;
8 (n) sexual assault, as provided in 45-5-502;
9 (o) sexual intercourse without consent, as provided in 45-5-503;
10 (p) indecent exposure, as provided in 45-5-504;
11 (q) deviate sexual conduct, as provided in 45-5-505;
12 (r) incest, as provided in 45-5-507;
13 (s) endangering the welfare of children, as provided in 45-5-622;
14 (t) unlawful transactions with children, as provided in 45-5-623;
15 (u) sexual abuse of children, as provided in 45-5-625;
16 (v) ritual abuse of a minor, as provided in 45-5-627;
17 (w) burglary, as provided in 45-6-204;
18 (x) theft, as provided in 45-6-301;
19 (y) deceptive practices, as provided in 45-6-317;
20 (z) forgery, as provided in 45-6-325;
21 (aa) theft of identity, as provided in 45-6-332;
22 (bb) obscenity, as provided in 45-8-201;
23 (cc) public display or dissemination of obscene material to minors, as provided in 45-8-206;
24 (dd) criminal distribution of dangerous drugs, as provided in 45-9-101;
25 (ee) criminal possession of dangerous drugs, as provided in 45-9-102;
26 (ff) criminal possession with intent to distribute, as provided in 45-9-103;
27 (gg) criminal possession of precursors to dangerous drugs, as provided in 45-9-107;
28 (hh) criminal distribution of dangerous drugs on or near school property, as provided in 45-9-109;
29 (ii) criminal production or manufacture of dangerous drugs, as provided in 45-9-110;
30 (jj) criminal distribution of an imitation dangerous drug, as provided in 45-9-112;

(kk) criminal possession of an imitation dangerous drug with the purpose to distribute, as provided in 45-9-113;

(ll) criminal manufacture of an imitation dangerous drug, as provided in 45-9-115;

(mm) operation of an unlawful clandestine laboratory, as provided in 45-9-132;

(nn) criminal possession of drug paraphernalia, as provided in 45-10-103;

(oo) manufacture or delivery of drug paraphernalia, as provided in 45-10-104; or

(pp) delivery of drug paraphernalia to a minor, as provided in 45-10-105.

~~———— (7) The board may issue a 6-month nonrenewable letter of provisional licensure to a first-time applicant pending the results of the criminal background check.~~

~~———— (8)(7) Upon receipt of information from the department of justice that the person holding a provisional license has pleaded guilty or nolo contendere to or been found guilty of any offense listed in subsection (6), the board shall immediately revoke the provisional license.~~

~~———— (9)(8)(7) The provisions of subsection (6) may be waived by the board upon the request of:~~

~~(a) an affected applicant for licensure; or~~

~~(b) the person holding a license subject to revocation.~~

~~(10)(9)(8) A waiver under subsection (9) (8) (7) may be granted under certain conditions, taking into consideration, without limitation, the following:~~

~~(a) the age at which the crime was committed;~~

~~(b) the circumstances surrounding the crime;~~

~~(c) the length of time since the crime;~~

~~(d) subsequent work history;~~

~~(e) employment references;~~

~~(f) character references; and~~

~~(g) other evidence demonstrating that the applicant does not pose a threat to the health, safety, or well-being of children, the elderly, mentally ill persons, or other vulnerable persons.~~

~~(11)(10)(9) (a) Any information received by the board from the department of justice pursuant to this section is not available for examination except by the affected applicant for licensure, the applicant's authorized representative, the person whose license is subject to revocation, or the licensee's authorized representative. A record, file, or document may not be removed from the custody of the department of justice.~~

~~(b) The information referred to in subsection (11)(a) (10)(A) (9)(A) is subject to the rules of discovery and~~

1 admissibility of evidence in a judicial proceeding.

2 ~~(12)(11)~~(10) Any information made available to the affected applicant for licensure or the person whose
3 license is subject to revocation must be information pertaining only to that person.

4 ~~(13)(12)~~(11) Rights of privilege and confidentiality established in this section do not extend to any
5 document created for purposes other than a background check under this section.

6 ~~(14)(13)~~(12) The board shall adopt the necessary rules to fully implement the provisions of this section."
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8 ~~Section 3.~~ Section 37-22-304, MCA, is amended to read:

9 ~~"37-22-304. Renewal of license.~~ (1) An application for renewal of an existing license must be made
10 on or before the date set by department rule.

11 ~~(2) Application for renewal must be made upon a form provided by the department. A renewal license~~
12 must be issued upon payment of a renewal fee set by the board and upon submitting proof of qualification for
13 renewal, including passing a background check as provided in 37-22-301(5).

14 ~~(3) Subject to subsection (5), the renewal fee is increased by 10% for each month or part of a month~~
15 that the renewal is delayed. The maximum fee for delayed renewal may not exceed twice the normal renewal
16 fee.

17 ~~(4) Subject to subsection (5), a license not renewed within 1 year following its expiration date terminates~~
18 automatically.

19 ~~(5) This section may not be interpreted to conflict with 37-1-138."~~
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21 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 2005.

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23 NEW SECTION. Section 4. Applicability. [This act] applies to applications for licensure ~~or the renewal~~
24 of a license MADE on or after [the effective date of this act].

25 - END -